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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 RHONDA TAYLOR MITCHELL,)
13 Plaintiff,) Case No.: 2:20-cv-01979-DJA
14 vs.)
15 ANDREW SAUL,) **MOTION FOR EXTENSION OF TIME TO FILE
Commissioner of Social Security,) CERTIFIED ADMINISTRATIVE RECORD
16 Defendant.) AND ANSWER; DECLARATIONS OF JEBBY
17) RASPUTNIS AND CHRISTIANNE VOEGELE;
18) ~~PROPOSED~~ ORDER
19) (**FIRST REQUEST**)
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1 Defendant, Andrew Saul, Commissioner of Social Security (the “Commissioner”), by and through
2 his undersigned attorneys, hereby moves for a 60-day extension of time to file an Answer to Plaintiff’s
3 Complaint and the electronic Certified Administrative Record (eCAR), changing the date on which the
4 Answer is due from the current due date of January 19, 2021, to the new due date of March 20, 2021.
5 Counsel for Defendant contacted Plaintiff’s counsel via email on January 13, 2021 and Plaintiff does not
6 object to this request.

7 Defendant makes this request in good faith and for good cause, because the eCAR, which must
8 be filed with the Answer and is necessary to adjudicate the case, is not yet available. The public health
9 emergency pandemic caused by COVID-19 has significantly impacted operations in the Social Security
10 Administration’s Office of Appellate Operations (OAO) in Falls Church, Virginia, which is responsible
11 for producing the eCAR that must be filed with the Answer, per 42 U.S.C. §§ 405(g) and (h). Prior to the
12 COVID-19 pandemic, to safeguard Personally Identifiable Information (PII), all hearing recordings,
13 which are part of the administrative record, were downloaded onto compact discs and encrypted. OAO
14 securely routed the encrypted discs to a private contractor through a daily pickup and delivery service at
15 the Official Duty Station (ODS) in Falls Church, Virginia. The private contractor would transcribe the
16 hearing recording and send the paper copy of the hearing transcript back to OAO. OAO personnel would
17 then scan the hearing transcript into the electronic record or place the hearing transcript in the paper case
18 file. Thereafter, OAO personnel would assemble the administrative record in a prescribed order. After
19 the advent of COVID-19, the Agency has taken a number of concrete steps to transition its years-old in
20 person CAR preparation process to a fully virtual one.

21 As detailed in the attached declarations from Jebby Rasputnis, Executive Director of the OAO,
22 and Christianne Voegele, Chief of the Court Case Preparation and Review Branch 1, and Acting Chief of
23 the Court Case Preparation and Review Branch 3, of OAO, OAO has been actively pursuing mitigation

1 efforts to allow the remote preparation of administrative records to ensure a continuity of operations. For
2 cases in which the private contractors were already in possession of hearing recordings for transcription,
3 with the assistance of the Office of Acquisitions and Grants (OAG), OAO received approval to receive
4 these transcripts from the private contractors via secured email, e.g., using password protection and
5 redacted Social Security Numbers. In April 2020, OAO began receiving such hearing transcripts from
6 private contractors via secured email.
7

8 For cases in which OAO had not yet submitted recordings to the private contractors before March
9 16, 2020, OAO has been pursuing all available options to obtain transcriptions for these cases. In May
10 2020, OAO began encrypting hearing recordings and securely emailing them to the contractors for
11 transcription. Through the month of May, OAO and the contractors worked to resolve technical issues
12 that arose, particularly with large files.
13

14 As indicated by the Rasputnis declaration, the Commissioner must navigate and overcome five
15 simultaneous challenges as it transitions the preparation of eCARs from an in-person process to a
16 completely virtual one:

17 1. Obtaining the appropriate technology, subject to Federal purchasing rules;

18 2. Retraining staff on the new procedures and new technology, which differ quite dramatically
19 from the old ones;

20 3. Adhering to the Federal government protections for personally identifiable information (PII);
21

22 4. Working with outside vendors for transcription services, including obtaining a new vendor
23 subject to Federal contracting rules; and

24 5. Completing security clearance processes for any new employees *and* any employees of new
25 vendors before allowing access to PII and other sensitive information of the vendors. While the agency
26 has worked hard to overcome challenges related to this transition, the agency estimates that it is

1 producing CARs at approximately one-third of the level of production pre-COVID, with the hopes of
2 increasing that rate over the next several weeks. In March, April, and May 2020, during the initial stages
3 of the pandemic, Defendant requested a 90-day extension when the CAR was unavailable. Now that
4 OAO has regained some capability of producing transcripts, the Commissioner has reduced the length of
5 extension requested to 60 days. In this case, given the volume of pending cases, Defendant requests a 60-
6 day extension in which to respond to the Complaint.

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8 Accordingly, the Commissioner requests that this Court grant his motion for a 60-day extension in
9 which to file an Answer and lodge the eCAR, changing the date on which the Answer is due from the
10 current due date of January 19, 2021, to the new due date of March 20, 2021. Counsel for Defendant
11 further states that the Office of General Counsel (OGC) is monitoring receipt of transcripts on a daily
12 basis and is committed to filing Answers promptly upon receipt and review of the administrative records.
13 Counsel for Defendant apologizes to the Court and Counsel for Plaintiff for any inconveniences caused
14 by this delay.

15 Dated: January 14, 2021

16 Respectfully submitted,

17 NICHOLAS A. TRUTANICH
18 United States Attorney

19 /s/ Chantal R. Jenkins
20 Chantal R. Jenkins
Special Assistant United States Attorney

21 IT IS SO ORDERED:
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24 UNITED STATES MAGISTRATE JUDGE

25 DATED: January 15, 2021

CERTIFICATE OF SERVICE

I, Chantal R. Jenkins, certify that the following individuals were served with a copy of the
**MOTION FOR EXTENSION OF TIME TO FILE CERTIFIED ADMINISTRATIVE RECORD
AND ANSWER; DECLARATIONS OF JEBBY RASPUTNIS AND CHRISTIANNE VOEGELE;
[PROPOSED] ORDER** on the date and via the method of service identified below:

CM/ECF:

Hal Taylor
223 Marsh Avenue
Reno, NV 89509
775-825-2223
Fax: 775-329-1113
Email: haltaylorlawyer@gbis.com

Dated this 14th day of January 2021.

/s/ Chantal R. Jenkins
CHANTAL R. JENKINS
Special Assistant United States Attorney

DECLARATION OF JEBBY RASPUTNIS
OFFICE OF APPELLATE OPERATIONS
SOCIAL SECURITY ADMINISTRATION

I, JEBBY RASPUTNIS, Executive Director of the Social Security Administration's Office of Appellate Operations (OAO), declare and state as follows:

- 1) My office is responsible for, among other things, preparing certified copies of administrative records (CARs) for Federal court review when claimants appeal the final decisions of the Commissioner of Social Security.
- 2) Beginning in mid-March, the Social Security Administration restricted physical access to our buildings because of the COVID-19 pandemic. In order to protect the health and safety of our employees and our community, we have kept our employees on maximum telework, only authorizing limited in-office work since that time. The OAO's office in Falls Church, Virginia – which is home to OAO's Division of Civil Actions (DCA) – is included in this restriction. Prior to the pandemic, DCA staff worked out of the Falls Church office, with the support of three contracted transcription typing services, to complete CARs using a manual paper process.

RECENT PROGRESS IN PRODUCING CARs

- 3) After much work, we have redesigned our business processes to allow for a mostly virtual CAR preparation process. These new approaches required us to modify and test technology, retrain staff, and modify blanket purchasing agreements with the transcription typing services we rely on for transcripts of agency hearings. It has taken us some time and more than one try, but we now have a virtual process that has enabled us to ramp up our CAR production commensurate with the capacity of our transcription

typing services. In September, we processed 1,372 cases; in October, we processed 2,115; and, in November, we processed 1,709.

- 4) The effects of the COVID-19 pandemic also resulted in staffing and processing problems for our transcript typing service contractors. These contractors are a necessary part of the CAR preparation process because the agency did not have staff to produce hearing transcripts. The agency is supporting its existing contractors in hiring new staff by expediting their suitability investigations and credentialing.
- 5) We have historically only worked with three contracted transcript typing services, but in September 2020, we brought two additional contracts online. We are now working with five contracted transcription typing services and are augmenting those services by training in-house staff to complete transcriptions.
- 6) We continuously assess staffing needs within our DCA branches. As part of our internal transcription augmentation effort, we have transferred approximately 50 staff members to the DCA branches, and we are hiring additional Civil Actions Assistants to process this workload.

CURRENT CHALLENGES

- 7) Backlog: The backlog of work that built up during the past seven months is daunting. At the end of November, we had more than 10,200 new court cases waiting to be processed. Although we are now producing CARs at our pre-pandemic levels, the number of new complaints in the district courts has increased. In fiscal 2019, district court complaints filed against the agency averaged 1,440 per month. In the last three months, we received more than 2,000 new court cases each month. We publish quarterly workload information at

https://www.ssa.gov/appeals/DataSets/08_National_New_Court_Cases_and_Remands.html.

- 8) Prioritizing Cases Using the New Process: Due to our change to a new electronic processing system, our staff had difficulty separating the oldest cases from the newer cases when transmitting audio files to the contracted transcription typing services. Although we now have an organizational system to identify older cases for processing by our contract typing services, each contractor works at a different speed based on their individual staffing challenges. As our organization system continues to improve the processing order, we expect that disparities between case filing dates and CAR completion dates will decrease. We continue to focus our efforts on processing the most aged cases.
- 9) Capacity of Contracted Transcription Typing Services: Despite our best efforts to assist, the pandemic has adversely impacted the contractors' capacity to perform their transcription services. We have been working with the existing contractors to increase their capacity, and have effectuated two new contracts. However, our contractors have finite capacity to deliver hearing transcripts. The pandemic's impact on the contractors' workforce remains outside of our control.
- 10) Overall, the timeframe for delivering a CAR in any individual case has improved.

Although we remain subject to some constraints, we continue to work on increasing productivity to the best of our ability. We ask for continued patience as we work to increase our production of CARs, and address rising court case filings.

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated December 04, 2020

/s/ *Jebby Rasputnis*
Jebby Rasputnis

DECLARATION OF CHRISTIANNE VOEGELE
OFFICE OF APPELLATE OPERATIONS
SOCIAL SECURITY ADMINISTRATION

I, CHRISTIANNE VOEGELE, Chief of Court Case Preparation and Review Branch 1, and Acting Chief of Court Case Preparation and Review Branch 3, of the Social Security Administration's Office of Appellate Operations (OAO), declare and state as follows:

(1) Under direct delegation from the Commissioner of Social Security, the Office of Hearings Operations (OHO) administers a nationwide hearings program, and OAO administers a nationwide appeals program. OHO includes the Administrative Law Judges who hold hearings on claims arising under Titles II and XVI of the Social Security Act, as amended, when a claimant who is dissatisfied with their administrative determination requests a hearing. OAO includes the Appeals Council, which reviews claims when a claimant is dissatisfied with the decision rendered by an Administrative Law Judge. OAO also provides professional and technical advice to the Deputy Commissioner and Administrative Appeals Judges of the Appeals Council in the processing of cases in which a claimant has filed a civil action.

(2) One function of the Appeals Council is to act on requests for review of hearing decisions made by Administrative Law Judges and to either grant, deny or dismiss any such request. Under the regulations of the Social Security Administration, if the Appeals Council denies a timely request for review of a hearing decision, that hearing decision becomes the "final decision" within the meaning of, and subject to, the provisions for judicial review in section 205(g) of the Social Security Act, as amended (42 U.S.C. section 405(g)). The first sentence of that section reads as follows:

"Any individual, after any final decision of the Commissioner made after a hearing to which he was a party, irrespective of the amount in controversy, may

obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner may allow.***"

(3) I am responsible for the processing of claims under Titles II and XVI of the Social Security Act, as amended, whenever a civil action has been filed in the Fourth, Sixth, Seventh, Ninth, Eleventh, and District of Columbia judicial circuits. As described below, OAO's business processes are true to the best of my knowledge and belief.

- a) If a civil action is properly commenced, the third sentence of 42 U.S.C. 405(g) states the following: "As part of the Commissioner's answer[,] the Commissioner shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based." On behalf of the Commissioner of the Social Security Administration, OAO personnel are responsible for preparing a certified copy of the transcript of the record.
- b) Upon notification of the civil action by the U.S. Attorney's Office or the Social Security Administration's Office of General Counsel, OAO personnel must locate and retrieve the plaintiff's claim(s) file, which is in either a paper or electronic format. The file contains both evidentiary and procedural documents, and the recording of any hearing held before an Administrative Law Judge.
- c) Upon locating the file, OAO personnel determines if the claimant timely filed the civil action and, if so, routes the recording of the hearing to a private contractor for transcription.
- d) Historically and prior to the COVID-19 pandemic, to safeguard Personally Identifiable Information (PII), all hearing recordings were downloaded onto compact discs, and these discs were encrypted. OAO securely routed the encrypted discs to a

private contractor through a daily pickup and delivery service at the Official Duty Station (ODS) in Falls Church, Virginia. The contractor is responsible for all tasks necessary for transcription typing services. It is estimated that an average hearing lasts 45 minutes and results in an average of 33 pages of transcript. Each transcript contains a certification statement by a transcriber and proofreader. Transcription of a hearing recording can take up to 20 business days, but is generally transcribed in 5-10 business days. After the contractor transcribed the hearing recording, a paper copy of the hearing transcript was sent back via a delivery service to the ODS in Falls Church, Virginia. OAO personnel would then scan the hearing transcript into the electronic record or place the hearing transcript in the paper case file. Thereafter, OAO personnel would assemble the administrative record in a prescribed order.

- e) Most cases are adjudicated using the Social Security Administration's Electronic Disability Collect System (EDCS). Even using EDCS, most cases historically required physical, in-house scanning and uploading of hearing transcripts. This work was performed at the ODS.
- f) Even for cases using EDCS that are in electronic format, many jurisdictions require encrypted compact discs and paper copies of the certified administrative record. All paper copies are produced at the ODS, and all compact discs and paper copies are shipped via United States Parcel Service from the ODS.
- g) Due to the COVID-19 pandemic, OAO staff are not currently authorized to report to the office due to health and safety concerns. On or about March 16, 2020, OAO began working remotely. Consequently, OAO had been unable to complete certified administrative records on any cases that required in-office work at the ODS,

including any cases in which the transcript(s) of the hearing recording(s) had not already been uploaded to the electronic file.

- h) To ensure a continuity of operations, OAO has been actively pursuing mitigation efforts to allow the remote preparation of as many administrative records as possible.
 - a. For cases in which the private contractors were already in possession of hearing recordings for transcription, with the assistance of the Office of Acquisitions and Grants (OAG), OAO received approval to receive these transcripts from the private contractors via secured email, e.g., using password protection and redacted Social Security Numbers. In April 2020, OAO began receiving such hearing transcripts from private contractors via secured email.
 - b. Subsequently, OAO consulted with OAG and the Office of the General Counsel, and obtained approval for a new process to replace encrypted compact discs. In May 2020, OAO began encrypting hearing recordings and securely emailing them to the contractors for transcription. Through the month of May, OAO and the contractors worked to resolve technical issues that arose, particularly with large files. The process is functioning now, albeit at a fraction of normal productivity.
- i) OAO plans to continue to explore all options available to complete the preparation of certified electronic records during the COVID-19 pandemic.
- j) OAO generally prioritizes the preparation of the certified administrative records based on receipt dates, with the oldest receipt dates processed first. OAO will work to ensure the oldest pending cases, including court remands and final decisions, are given priority processing.

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

June 17, 2020

Date


CHRISTIANNE VOEGELE